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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,885	07/07/2003	Garry Tsaar		8893
29745	7590	03/30/2006		
JOE NIEH 18760 E. AMAR ROAD #204 WALNUT, CA 91789			EXAMINER FIDEI, DAVID	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 03/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/614,885	Applicant(s) TSAUR, GARRY	
	Examiner David T. Fidei	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3, 5-9 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones (Patent no. 1,459,831) in view of Lowry et al (Patent Pub. No. US 2002/0088723).

Jones discloses an elongated tube housing 5 with two open ends and a fixed length that is preferably formed of aluminum that is considered to resist axial compression. An elongated member 18 is disposed with the hollow tube housing 5. The difference between the claimed subject matter and Jones resides in a protective covering enclosing the hollow tube housing and elongated member.

Lowry et al teaches the shipping of package 20 by the use of an outer shipping bag 36. It would have been obvious to one of ordinary skill in art to modify the device of Jones by providing a protective cover enclosing the covering enclosing the hollow tube housing and elongated member as taught by Lowry et al, in order to permit shipping of the device for distribution.

As to claims 3 and 9 the open end of the housing is sealed at end 8.

As to claims 4 and 11, Lowry et al contemplates plastic in paragraph [0041].

As to claim 13, the swab applicator includes a handle 18 and an absorbent tip 20. The brush end is considered absorbent, as the applicator normally feels wet after normal use for a relatively long period.

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3. Claims 4 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims above, and further in view of Nichols (Patent no. 2,542,206).

The difference between the claimed subject matter and Lowry et al resides in the protective covering having a notch. Providing a notch in a shipping bag is notoriously old and well known as taught by Nichols figures 4 and 5, # 18. It would have been obvious to one of ordinary skill in the art to modify the protective covering by providing a notch in one or more of its edges in order to provide a convenient manner for opening the covering.

Response to Arguments

4. Applicant's arguments filed December 27, 2005 have been fully considered but they are not persuasive.

With regard to Jones (US Patent No. 1,459,831) disclosing a holding device that is a tube sealed for a toothbrush in an air tight receptacle, it is not seen what this has to do with the claimed subject matter. Nothing is recited in the claims regarding the exclusion of such an arrangement. To the contrary, the Examiner points out the packaging is set forth as comprising. It is well settled patent law that the term comprising is "open-ended" where the prior art device can include elements that are not part of claims. The transitional term "comprising", which is synonymous with "including," "containing," or "characterized by," is inclusive or open-ended and does not exclude additional, unrecited elements or method steps. See, e.g., > Mars Inc. v. H.J. Heinz Co., 377 F.3d 1369, 1376, 71 USPQ2d 1837, 1843 (Fed. Cir. 2004) ("like the term comprising, 'the terms containing' and mixture' are open-ended.").< Invitrogen Corp. v. Biocrest Mfg., L.P., 327 F.3d 1364, 1368, 66 USPQ2d 1631, 1634 (Fed. Cir. 2003).

Hence, applicant's position that Jones' device can not meet the claimed subject matter because a cap element is screwed on the open tube is defective as a matter of law. Furthermore Applicant's arguments on page 7 are moot as it is not required that a reference teach what applicant has disclosed, but only that the claims "read on" something disclosed in the reference.

Accordingly, the rejections have been maintained.


Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fidei whose telephone number is (571) 272-4553. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


David T. Fidei
Primary Examiner
Art Unit 3728